

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AMERICAN PHYSICIANS
ASSURANCE CORPORATION,

Plaintiff-Counter-Defendant,

v.

DONALD JAMES HAM, M.D.,
ALAMOGORDO EYE CLINIC, INC.,

Defendants-Counter-Plaintiffs,

and THE ESTATE OF MARTHA
VALENCIA CARDON, DECEASED, by
and through Personal Representative
ELIZABETH ALVAREZ,

Defendant.

No. 1:08-cv-638 PK/ACT

ORDER

THIS MATTER comes on for consideration of Plaintiff-Counter-Defendant APA's Motion in Limine to Exclude Evidence Relating to Stovall v. Arik filed October 15, 2009 (Doc. 163). Upon consideration of the motion, the court will reserve ruling. Whether such evidence would be admissible is dependent not only upon the purpose for which it is offered, but also upon a determination that exclusion is not warranted under Fed. R. Evid. 403.

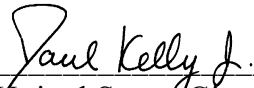
(1) Background. As proof of APA's alleged bad faith failure to settle, Defendants-Counter-Plaintiffs Dr. Ham and AEC propose to reprise five other malpractice cases where APA was the insurer. Doc. 191 at 2-5. According to Dr. Ham and AEC, these cases will demonstrate a "pattern and practice of institutional bad faith." Doc. 191 at 5.

(2) Discussion. Given that the adjustment of each medical malpractice case turns on its own facts, Defendants would have to show substantial similarity between APA's conduct in the underlying cases and its conduct in this one before such evidence would be relevant. Fed. R. Evid. 401, 402, 404(b); State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 415, 423 (2003). Counsel are advised that the court will not entertain a series of mini-trials concerning the insurer's conduct in other cases; nor will such evidence be admitted if it would confuse the issues or take an inordinate amount of time. Fed. R. Evid. 403.

Counsel are reminded of the importance of objections and offers of proof. Fed. R. Evid. 103(a).

NOW, THEREFORE, IT IS ORDERED that a decision on Plaintiff-Counter-Defendant APA's Motion in Limine to Exclude Evidence Relating to Stovall v. Arik filed October 15, 2009 (Doc. 163) will be deferred.

DATED this 6th day of November 2009, at Santa Fe, New Mexico.



United States Circuit Judge
Sitting by Designation